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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKETT NO.
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EXAMINER

ART UNIT	PAPER NUMBER
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1647

DATE MAILED:

EXAMINER INTERVIEW SUMMARY RECORD

All participants (applicant, applicant's representative, PTO personnel):

(1) S. Unigore, PTO (3)

(2) MR WAKILI, ATCC (4)

Date of Interview: 11/29/01

Type: Telephonic Personal (copy is given to applicant applicant's representative).

Exhibit shown or demonstration conducted: Yes No. If yes, brief description:

Agreement: was reached with respect to some or all of the claims in question. was not reached.

Claims discussed: NA

Identification of prior art discussed: NA

Description of the general nature of what was agreed to if an agreement was reached, or any other comments: MR WAKILI

Stated that Vector CRL-10250, deposited October 3, 1989 is not publicly available

(A fuller description, if necessary, and a copy of the amendments, if available, which the examiner agreed would render the claims allowable, must be attached. Also, where no copy of the amendments which would render the claims allowable is available, a summary thereof must be attached.)

1. It is not necessary for applicant to provide a separate record of the substance of the interview.

Unless the paragraph below has been checked to indicate to the contrary, A FORMAL WRITTEN RESPONSE TO THE LAST OFFICE ACTION IS NOT WAIVED AND MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW (e.g., items 1-7 on the reverse side of this form). If a response to the last Office action has already been filed, then applicant is given one month from this interview date to provide a statement of the substance of the interview.

2. Since the examiner's interview summary above (including any attachments) reflects a complete response to each of the objections, rejections and requirements that may be present in the last Office action, and since the claims are now allowable, this completed form is considered to fulfill the response requirements of the last Office action. Applicant is not relieved from providing a separate record of the substance of the interview unless box 1 above is also checked.

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on has been entered.
2. The Amendment filed August 15, 2001 (Paper No. 60) in response to the Office Action of February 14, 2001 (Paper No. 56) is acknowledged and has been entered. Previously pending claims 38-59 have been canceled and new claims 60-67 have been added. Claims 60-67 are currently being examined.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

4. The specification is objected to and claims 64-67 are is rejected under 35 U.S.C. § 112, first paragraph, as failing to provide an adequate written description of the invention and failing to provide an enabling disclosure, because the specification does not provide evidence that the claimed biological materials are (1) known and readily available to the public; (2) reproducible from a written description (e.g. sequenced); or (3) deposited.

Claims 64-67 are drawn to plasmid vector CRL 10250.

It is unclear if plasmid vector CRL 10250 is known and publicly available, or can be reproducibly isolated without undue experimentation. Clearly, without access to a the plasmid vector, it would not be possible to practice the claimed invention. Therefore, a suitable deposit for patent purposes is suggested. Without a publicly

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available deposit of the above vector, one of ordinary skill in the art could not be assured of the ability to practice the invention as claimed.

Applicant's referral to the deposit of the plasmid vector CRL 10250 on page 57 of the specification is an insufficient assurance that all required deposits have been made and all the conditions of MPEP 608.01 (p)(c) met.

If a deposit has been made under the provisions of the Budapest Treaty, filing of an affidavit or declaration by applicant or assignees or a statement by an attorney of record who has authority and control over the conditions of deposit over his or her signature and registration number stating that the deposit has been accepted by an International Depository Authority under the provisions of the Budapest Treaty, that all restrictions upon public access to the deposits will be irrevocably removed upon the grant of a patent on this application and that the deposit will be replaced if viable samples cannot be dispensed by the depository is required. This requirement is necessary when deposits are made under the provisions of the Budapest Treaty as the Treaty leaves this specific matter to the discretion of each State.

In addition to the conditions under the Budapest Treaty, applicant is required to satisfy that all restrictions imposed by the depositor on the availability to the public of the deposited material will be irrevocably removed upon the granting of a patent in U.S. patent applications. Applicant's provision of these assurances would obviate this objection/rejection.

Affidavits and declarations, such as those under 37 C.F.R. § 1.131 and 37 C.F.R. § 1.132, filed during prosecution of the parent application do not automatically become a part of this application. Where it is desired to rely on an earlier filed

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affidavit, the applicant should make the remarks of record in the later application and include a copy of the original affidavit filed in the parent application

As an additional means for completing the record, applicant may submit a copy of the contract with the depository for deposit and maintenance of the deposit.

5. Claims 60-63 appear to be free of the art and are allowable.
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Ungar, PhD whose telephone number is (703) 305-2181. The examiner can normally be reached on Monday through Friday from 7:30am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Caputa, can be reached at (703) 308-3995. The fax phone number for this Art Unit is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Effective, February 7, 1998, the Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1642.

Susan Ungar
Primary Patent Examiner
November 28, 2001